

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEFFREY SCOTT ZIEGLER,

Petitioner,

v.

BRUNO STOLC,

Respondent.

No. C10-5263 BHS/KLS

ORDER DENYING PETITIONER'S
MOTION FOR STAY AND ABEYANCE

This habeas corpus action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the court is Petitioner's motion for stay and abeyance. Dkt. 25. Having carefully reviewed the motion, Respondent's response in opposition (Dkt. 28), and balance of the record, the court finds that the motion should be denied.

On June 9, 2010, Petitioner filed his habeas corpus petition seeking to challenge his 2007 convictions for one count of rape of a child in the first degree and three counts of child molestation in the first degree. Dkt. 10. On July 29, 2010, Respondent filed an answer requesting that the petition be dismissed with prejudice on the grounds that all of Petitioner's claims are unexhausted. Dkt. 22. Respondent further argues that Mr. Ziegler's claims are now time-barred and RCW 10.73.090(3)(b) prohibits him from presenting his federal claims to the

1 Washington courts absent cause and prejudice, or actual innocence, to excuse his procedural
2 default. *Id.*

3 Upon review, the court concludes that a stay and abeyance is inappropriate in this case.

4 DISCUSSION

5 In *Rhines v. Weber*, 544 U.S. 269, 274-279 (2005), the Supreme Court approved the
6 “stay-and-abeyance” procedure for mixed petitions in light of the potential dilemma posed by the
7 AEDPA statute of limitations, 28 U.S.C. § 2244(d). For petitioners who file mixed petitions and
8 who are close to the end of AEDPA’s one-year time limit, there is a probability that they will not
9 have time in which to exhaust state remedies and refile in federal court before the limitations
10 period runs. In such cases, rather than dismissing the mixed petition outright pursuant to *Rose v.*
11 *Lundy*, a district court may stay the petition and hold it in abeyance while the petitioner returns to
12 state court to exhaust his unexhausted claims. *Rhines*, 544 U.S. at 275. Once he has exhausted
13 his state remedies, the federal court will lift the stay and allow the petitioner to proceed on his
14 now-exhausted claims. *Id.* at 275-76. The Supreme Court has emphasized, however, that this is
15 a process to be used sparingly and under limited circumstances. *Rhines*, 544 U.S. at 277.

16 Petitioner requests a stay based on: “...the outcome of the Washington Supreme Court,
17 and the United States District Court, have direct bearing on the issues in the District of Texas
18 Court, especially when perjured testimony is being used.” Dkt. 25, p. 1. Although his motion is
19 unclear, it appears that Mr. Ziegler wishes to attempt to exhaust his claims in state court. The
20 record reflects, however, that Mr. Ziegler is barred from filing a personal restraint petition
21 because his judgment and sentence became final on March 13, 2009. Dkt. 23, Exh. 13.
22 Washington law bars a defendant from filing a personal restraint petition more than one year
23 after the defendant’s judgment and sentence becomes final. RCW 10.73.090(3)(b). As it is now
24
25
26

1 more than one year since the mandate issued in Mr. Ziegler's case, he is time barred from
2 attempting to present his federal claims to the Washington courts absent a showing of cause and
3 prejudice, or actual innocence, to excuse his procedural default. Mr. Ziegler has made no such
4 showing.

5 Accordingly, the court finds that a stay and abeyance in this case is not appropriate. It is
6 therefore, **ORDERED** that Petitioner's motion for a stay (Dkt. 25) is **DENIED**.

7
8 The Clerk shall send a copy of this Order to Petitioner and counsel for Respondent.

9
10 DATED this 14th day of September, 2010.

11
12 
13 Karen L. Strombom
14 United States Magistrate Judge
15
16
17
18
19
20
21
22
23
24
25
26